

REVISIONAL CIVIL

Before Mr. Justice G. H. Thomas, Acting Chief Judge
and Mr. Justice Ziaul Hasan

1938
April, 11

DWARKA PRASAD (DECREE-HOLDER-APPLICANT) v. MOHAM-
MAD TAQI HUSAIN (JUDGMENT-DEBTOR-OPPOSITE PARTY)*

United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 4, 5 and 30 and Schedule III—Waqf—"Mutawalli", whether can be agriculturist—Costs allowed under original decree, if can be reduced by court under Agriculturists' Relief Act—Future interest on decrees passed before Agriculturists' Relief Act came into force, whether can be reduced.

A *mutawalli* can be an agriculturist within the meaning of the Agriculturists' Relief Act. If the *mutawalli* of a *waqf* has beneficial interest under the *waqf* then his payment of land revenue brings him under the definition of agriculturist. The fact whether the *waqf* was made before or after borrowing money does not affect the definition of "agriculturist" contained in the Agriculturists' Relief Act. *Bhawani Shankar v. Khurshed Jahan* (1), and *Mohammad Musa Khan v. Sri Thakur Gopalji Maharaj* (2), relied on.

The Agriculturists' Relief Act does not authorise a court to make any reduction in the amount of costs allowed under the original decree.

Future interest on decrees passed before the passing of the Act is governed by section 30 and schedule III of the Agriculturists' Relief Act and not by section 4 of the Act. *Gauri Shankar v. Ganga Bakhsh Singh* (3), and *Jhamman Lal v. Surat Singh* (4), relied on.

Mr. Gaya Prasad Srivastava, for the applicant.

Mr. B. N. Shargha, for the opposite party.

THOMAS, A.C.J. and ZIAUL HASAN, J.:—This is an application for revision of an order of the learned Judge, Small Cause Court, Lucknow, amending a decree of his court under sections 5 and 30 of the United Provinces Agriculturists' Relief Act. The decree in favour of the

*Section 25 Application No. 92 of 1936, against the order of Mr. Shaikat Husain, Judge, Small Cause Court, Lucknow, dated the 1st of February, 1936.

(1) (1937) I.L.R., 13 Luck., 402.

(2) (1937) A.L.J., 178.

(3) (1937) I.L.R., 13 Luck., 287.

(4) (1936) I.L.R., 13 Luck., 86.

plaintiff-applicant was passed on the 3rd of October, 1933, for recovery of Rs.750 with costs and future interest at 6 per cent. per annum on a suit on a bond for Rs.400. On the opposite-party's application under the Agriculturists' Relief Act, the learned Judge amended the decree on the 1st of February, 1936, in this manner that the contractual rate of interest which had been reduced from $37\frac{1}{2}$ per cent. per annum by the trial Judge to 24 per cent. per annum was further reduced to 10 per cent. per annum, the debt having been borrowed on the 2nd of February, 1930. He also made the costs recoverable by the plaintiff-applicant proportionate to the amount decreed. Future interest was ordered to run at 3 per cent. per annum from the date of the order and the decretal amount was made payable in twelve equal instalments falling due on the 3rd of October, 1937, and on the same date in the succeeding eleven years. It may be mentioned that the opposite-party after borrowing money from the plaintiff-applicant executed a deed of *waqf alalaulad* and he is now recorded in the revenue papers as being in possession as *mutawalli*.

The plaintiff-decree-holder objects to the order of the lower court on several grounds. The first is that as the opposite-party pays land revenue not in his personal capacity but as *mutawalli* of a *waqf*, he is not an agriculturist within the meaning of the Agriculturists' Relief Act. We do not agree with this contention. In the case of *Bhawani Shankar v. Khurshed Jahan* (1), which was decided by a Full Bench, the question before the Full Bench was whether trustees can be regarded as agriculturists within the meaning of the definition of the term as given in section 2(2) of the Act and the Judges unanimously answered this question in the affirmative. It was conceded before us that there was no difference in principle between a trustee and a *mutawalli*. A *mutawalli* therefore can be an agriculturist within the meaning of the Agriculturists' Relief Act.

1936

DWARAKA
PRASAD
&
MOHAMMAD
TAQI
HUSAIN

Thomas,
A. C. J.
and Ziaul
Hasan, J.

(1) (1937) I.L.R., 13 Luck., 402.

1938

DWARAKA
PRASAD
v.
MOHAMMAD
TAQI
HUSAIN

Thomas,
A. C. J.
and Ziaul
Hasan, J.

The point was decided in the same manner by the Allahabad High Court in the case of *Mohammad Musa Khan v. Sri Thakur Gopalji Maharaj* (1) in which it was held that if the *mutawalli* of a *waqf* has beneficial interest under the *waqf* then his payment of land revenue brings him under the definition of agriculturist. In the present case it has been found that the opposite-party is one of the beneficiaries under the *waqf*. The learned counsel for the applicant contended that as the opposite-party made a *waqf* of his property after borrowing money from the applicant, he should not get the benefit of the Agriculturists' Relief Act. We fail to see any force in this argument. In the Allahabad case also the facts were similar in that the mortgage was made in 1920 and it was after making the mortgage that the judgment-debtor executed a *waqf alalaulad* of his property. Moreover, the fact whether the *waqf* was made before or after borrowing money does not affect the definition of "agriculturist" contained in the Agriculturists' Relief Act. We therefore overrule the plea raised on this point on behalf of the applicant and hold that the learned Judge of the court below was right in applying the provisions of the Agriculturists' Relief Act to the opposite-party.

The next objection of the learned counsel for the applicant is as to the rate of interest fixed by the court below. He is in our opinion right in contending that the rate should be governed by section 30 and schedule III of the Act but he is not right in saying that that rate should be 14 per cent. per annum simple. The value of X was reduced by Government from $4\frac{1}{2}$ to $3\frac{1}{2}$ with effect from 8th May, 1935, and still further to $3\frac{1}{4}$ per cent. from 15th January, 1936. As the decree was amended by the court below on the 1st of February, 1936, the value of X at that time was $3\frac{1}{4}$ per cent. As the debt was under Rs.500 and was unsecured, the rate of interest according to schedule III comes to $X + 9\frac{1}{2}$,

(1) (1937) A.L.J., 178.

that is $12\frac{3}{4}$. We therefore hold that interest will run from the date of the debt to that of suit not at 10 per cent. per annum but at $12\frac{3}{4}$ per cent. per annum.

1933

DWARKA
PRASAD
v.

MOHAMMAD
TAQI
HUSAIN

Thomas,
A. C. J.
and Ziaul
Hasan, J.

The next objection of the applicant is to the costs of the suit being made proportionate. This objection must also be accepted. It has been held in several cases e.g. *Gauri Shankar v. Ganga Bakhsh Singh* (1) that the Agriculturists' Relief Act does not authorise a court to make any reduction in the amount of costs allowed under the original decree. We therefore set aside the order of the court below making the costs of suit proportionate to the amount decreed.

The learned counsel for the applicant also objects to future interest on the decree being reduced from 6 to 3 per cent. per annum. In view of the Full Bench decision of this Court in *Jhamman Lal v. Surat Singh* (2) future interest on decrees passed before the passing of the Act is governed by section 30 and schedule III of the Agriculturists' Relief Act and not by section 4 of the Act. In the present case the rate of future interest will remain as it was fixed in the original decree namely, 6 per cent. per annum.

The last point urged was that the court below should not have made the decretal amount payable in so large a number of instalments as twelve and that the date of the first instalment was unduly postponed by the court below. With the first of these contentions we do not agree. It is not contended before us that Chapter III of the Act applies to the opposite-party. Therefore under proviso (1) to section 3(1) of the Agriculturists' Relief Act, instalments in the present case could have been fixed so as to extend up to fifteen years from the date of the decree and the learned Judge of the court below was not wrong in making them extend over twelve years. We however think that the order fixing the 3rd of October, 1937, as the date on which the first

(1) (1937) I.L.R., 13 Luck., 287.

(2) (1936) I.L.R., 13 Luck., 86.

1938

DWARAKA
PRASAD
v.MOHAMMAD
TAQI
HUSAIN

instalment was to be made was not just and proper. We make the first instalment due on the 7th of October, 1938.

The application is therefore partly allowed and the order of the court below amending the decree modified in the light of the findings recorded above. In view of the success and failure of the parties, we order them to bear their own costs.

*Thomas,
A. G. J.,
and Ziaul
Hasan, J.*

Application partly allowed.

MISCELLANEOUS CIVIL

*Before Mr. Justice A. H. deB. Hamilton and
Mr. Justice R. L. Yorke*

LALA DURGA PRASAD (DEFENDANT-APPLICANT) v. BABU GUR DULAREY AND OTHERS (PLAINTIFFS-OPPOSITE PARTY)*

1938
April, 21

Civil Procedure Code (Act V of 1908), section 115 and Order XXXIII, rules 1, 5(d) and 9—Order granting application for leave to sue in forma pauperis—Revision, if lies—Proceedings under order XXXVIII, rule 1 and those under order XXXIII, rule 9, distinction between—Setting aside of order granting application to sue in forma pauperis—Court relying on statement made by the defendant opposing application—No ground for setting aside order if plaintiff's allegations show cause of action without court's falling back on defendant's statement.

Proceedings on an application for permission to sue in *forma pauperis* are proceedings before the commencement of a suit. They are therefore not interlocutory proceedings, and an application for revision will lie from the final decision in such proceedings. Since, an order either rejecting or granting an application for leave to sue in *forma pauperis* amounts to a case decided, and if the order falls within the purview of clauses (a), (b) or (c) of section 115, Civil Procedure Code, an application in revision is competent.

Case law discussed.

There is a clear distinction between proceedings prior to the commencement of the suit on an application under order XXXIII, rule 1, Civil Procedure Code, and the proceedings during the pendency of the suit on an application for the

*Section 115 Application No. 129 of 1937, against the order of Mr. Yaqub Ali Rizvi, Additional Civil Judge of Bara Banki, dated the 26th of October, 1937.